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ABSTRACT

In 1972 the jurisdiction of the United States Commission on Civil Rights was expanded to include discrimination on the basis of sex. Over the past ten years, Congress has passed several anti-discrimination measures, the President has issued Executive Orders, and several Federal agencies have promulgated regulations--all of which prohibit discrimination on the basis of sex. This publication is intended to inform individuals of their rights under the law, to explain the provisions of anti-sex discrimination measures, and to describe the practical steps which may be followed by individuals to insure protection of their rights. This booklet explains current Federal laws which prohibit sex discrimination, as well as policies and regulations of Federal agencies prohibiting sex discrimination. The booklet describes the major provisions of each law and regulation, and the complaint procedures established under each. Some sections are more extensive than others, depending on the degree of specificity and detail of each agency's procedures. (Author)

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A Guide To Federal Laws Prohibiting Sex Discrimination

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U. S. COMMISSION ON CIVIL RIGHTS

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and

Submit reports, findings, and recommendations to the President and the Congress.

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PREFACE

In 1972 the jurisdiction of the United States Commission on Civil Rights was expanded to include discrimination on the basis of sex.[1/]

Over the past ten years, Congress has passed several anti-discrimination measures, the President has issued Executive Orders, and several Federal agencies have promulgated regulations--all of which prohibit discrimination on the basis of sex. This publication is intended to inform individuals of their rights under the law, to explain the provisions of anti-sex discrimination measures, and to describe the practical steps which may be followed by individuals to insure protection of their rights.

This booklet explains current Federal laws which prohibit sex discrimination, as well as policies and regulations of Federal agencies prohibiting sex discrimination. The booklet describes the major provisions of each law and regulation, and the complaint procedures established under each. Some sections are more extensive then others, depending on the degree of specificity and detail of each agency's procedures.

1/ 42 U.S.C. §1975c.

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INTRODUCTION

The Constitution of the United States proclaims that all men are created equal. Unfortunately, the word "men" has been taken too literally, resulting in the principle that women are created unequal. With this practice the rule, rather than the exception, the issue of the legal rights of women in American society has been debated throughout the history of our country. Though these debates have focused mainly on political and employment rights, discrimination against women has been manifested also in such areas as public accommodations and facilities, public education, criminal laws and administration, tax and retirement benefits, consumer credit, mortgage finance, insurance, property rights, and rental and finance contracts. In short, discrimination against women exists in every facet of American society. The result of this discrimination has been the confinement of women to a different, and by most standards, inferior status. They have been stigmatized historically as an inferior class, and discrimination against women, though often different in kind and intensity, has been as pervasive as the discrimination experienced by racial minorities in this country. Although numerically women are a majority of the population, they, like minorities, lack the political power to remedy the discriminatory treatment they are accorded in the law and in American society.

This inferior status, tolerated and accepted as natural throughout our country's history, is reflected in our legal system. In common law, women were accorded few, if any rights, none of which were substantial,

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For instance, women were not allowed to enter into contracts, hold property or maintain legal action. In fact, it was not until 1920 that women of all races finally acquired the right to vote, through passage of the 19th Amendment.

The women's movement of the 19th century addressed itself to a wide variety of issues in its attempt to eliminate discrimination against women. Thus, 19th century feminists spoke out and demonstrated against restrictive marriage and family laws, discrimination in education, employment, property rights, and reproductive freedom, to name but a few. Throughout these years, feminists had perceived the need for political power and influence for women; they understood that, without the basic right to participate in the political process through exercise of the elective franchise, alterations in women's status would depend solely on the good will of the men in power and would thus be slow in coming. By the end of the century, therefore, the struggle for women's rights concentrated on obtaining the right to vote as a first step in obtaining full equality under the law for women. While the right to vote is basic to the achievement of other rights, however, the 19th Amendment could not cure all ills and alter the inferior status decreed by American society for women. Consequently, "woman's place" as subordinate to man was and still is, to some extent, reflected in existing laws and practices.

During recent years, outspoken feminists have compelled the courts and legislatures to view the role and status of women from a different

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perspective. Through the courts, they have demanded equal protection of the laws and vindication of their fundamental constitutional rights. The achievement of equal opportunity for women, however, is still blocked by social, economic and legal barriers, many of which are sanctioned by the law.

Some efforts have been made at both the Federal and State level to offer relief from discriminatory practices. While these developments represent one step toward the protection of the equal rights of women and men, they are only initial steps, piecemeal in nature, and with very limited scope. This is what makes the passage of the Equal Rights Amendment so imperative. The Amendment reads:

> Section 1: Equality of Rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
>
> Section 2: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
>
> Section 3: This amendment shall take effect two years after the date of ratification.

Passage of the Equal Rights Amendment would provide the constitutional guarantee of equal protection of the law for both women and men, which has not been guaranteed by any other means. The Supreme Court, for example, has not ruled that sex, like race, is a "suspect classification," and thus has not extended the full protection of the 14th Amendment to women. Although piecemeal revision of Federal and State laws would accomplish essentially the same goal as the Equal Rights Amendment (ERA), the process would require an inordinate amount of time, precision, planning,

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and legislative effort. The ERA will create a uniform national standard and mandate for such legislative reform, as it provides that sex is not a permissible determinant of citizens' legal rights. The principle expressed in the Amendment is that all persons, regardless of sex, must be treated as individuals rather than as representatives of the actual or alleged characteristics of a group. The Amendment's language makes clear as well that its requirements apply only to governmental, not private, action. The legal and civil rights of women and men, therefore, cannot be denied or determined on the basis of sex.

The ERA thus would require the revision of laws which confer a benefit, privilege, or obligation of citizenship on one sex; such benefits, privileges, or obligations would be extended to the previously excluded sex. This would include, for example, extending to men the beneficial provisions of protective labor legislation which currently limit the number of hours which women are permitted to work, impose weight lifting restrictions on women workers, and provide lounge facilities only for women workers, for example. Laws which provide for the granting of alimony and child support to the wife in a divorce settlement would be revised so that the criterion used to decide which spouse is ordered to provide support would be the ability of each spouse to make such payments, rather than her or his sex.

Laws which restrict opportunity to one sex and thus deny opportunity to the other sex would be invalidated. Thus the "domicile" laws in many States, which prohibit a wife from maintaining a legal residence different from that of her husband, and thus limit her ability to register to vote,

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would not be allowed.

Laws creating age distinctions on the basis of sex, such as those which define legal adulthood differently on the basis of sex, would be ruled unconstitutional. This would include laws which provide a different age of consent to marry without parental permission, for instance, for women and men.

Laws which distinguish between women and men on the basis of alleged physical differences, such as those which prevent women from engaging in military combat, will be invalidated, unless such laws are based on characteristics which apply to all (or some) women but not to any men, or on characteristics of all (or some) men but not of any women. Laws governing the determination of paternity, for example, would not be invalidated.

Laws which provide for the separation of the sexes will also be invalidated, except as such laws maintain the public interest and/or the individual's right to privacy. In the case of public restrooms, for example, the individual's right to privacy would take precedence.

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EMPLOYMENT DISCRIMINATION

Sex discrimination in employment may be both overt and covert. Overt discrimination exists where specific personnel policies deny equal employment opportunity on the basis of sex. Such policies may include the establishment of different job qualifications for women and men applying to perform the same functions in identical or similar positions, establishment of different wage scales, resulting in the payment of lower wages to women than to men performing the same or similar functions, or advertising job openings for men only or women only. Covert discrimination need not be intentional but still serves to deny equal employment opportunity on the basis of sex. Such discrimination manifests itself in systems, patterns, practices, and policies which may appear to be sex-neutral but which result in discrimination on the basis of sex. Such discrimination may be difficult to discover; an examination of the effects of employment policies and patterns is essential. Covert sex discrimination may result from the establishment of prerequisites for employment, height, for example, which effectively disqualify most women, and which are not, in fact, bona fide occupational qualifications.[2/] Recruiting methods and sources may also result in covert discrimination if, for example, a company recruits new employees from predominantly male colleges, or through an informal network of contacts who are exclusively male. The discriminatory effect of such policies and practices is to limit women's access to skilled, lucrative and creative employment.

2/ See glossary for definition.

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This section discusses Federal laws and regulations which prohibit sex discrimination in employment, including an explanation of their coverage and requirements as well as of their prescribed complaint procedures. For any discriminatory action, policy, or practice there may be several possible avenues of redress. Filing a complaint under one law or regulation will not usually prevent filing a complaint under another. Therefore, if an individual, or a group of persons, feels that they have been subjected to sex discrimination, they should examine all possible avenues of redress. Even where there is uncertainty about the applicability of a law or procedure to a specific instance of discrimination, the victim of such discrimination should consider utilizing the complaint procedure.

Complaints may serve several purposes. First, the complaint procedure may be the appropriate method for curing discriminatory actions, practices, or policies. Second, complaints alert agencies and other responsible parties of possible patterns and practices of discrimination; this aids the enforcement agency to determine which public or private institutions, organizations, or industries should be subject to compliance reviews.

Laws prohibiting discrimination often have complaint procedures which do not allow the complainant a right to a hearing. In such cases, the complaint serves to alert an agency or other responsible party that discrimination may exist and that an investigation is necessary; this permits the agency to impose sanctions where discrimination is found. Because there is no right to a hearing, however a complainant may only participate in the resolution at the discretion of the agency or other

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responsible party. Though the complaint is a potentially powerful tool, it does not necessarily afford the complainant the right to have her/his individual complaint resolved.

Beyond the complaint procedure prescribed by each law, however there are additional avenues of redress in an employment discrimination case. The most important are those prescribed by Title VII of the Civil Rights Act of 1964. 3/ These procedures grant the complainant the right to a hearing and to redress of his/her grievance, thereby permitting the complainant the most input into the resolution of the complaint, and probably producing the most satisfactory results for the complainant. The Equal Employment Opportunity Commission (EEOC), which is mandated to enforce Title VII, is the major Federal protector and enforcer of nondiscrimination in employment. If there is a violation of Title VII, in addition to a violation of a statute which prohibits employment discrimination on the basis of sex in a particular area, the complainant should utilize both complaint procedures.

The Department of Justice is the litigation arm of the executive branch of the Federal government. Under certain circumstances, the Attorney General of the United States is authorized to file suits charging a pattern and practice of discrimination. In addition, certain specific statutes permit the Attorney General to file suits charging sex discrimination. Where this is the case, it has been noted in the specific sections of this handbook.

3/ See sections entitled; Title VII of the Civil Rights Act of 1964 Equal Employment Opportunity in Private Employment and State and Local Government, and Title VII and Executive Order 11478 Equal Employment Opportunity in the Federal Government.

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TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972,[4] EQUAL EMPLOYMENT OPPORTUNITY IN PRIVATE EMPLOYMENT AND STATE AND LOCAL GOVERNMENT

Title VII prohibits discrimination in employment in Federal, State and local government, and in the private sector on the basis of race, color, religion, sex, or national origin. Enforcement of Title VII in the private sector and in State and local government is generally within the province of the Equal Employment Opportunity Commission (EEOC); for litigation purposes with respect to State and local government, enforcement is within the province of the Department of Justice. Equal employment opportunity in Federal employment is within the province of the U.S. Civil Service Commission.[5]

The EEOC was established to investigate and resolve complaints of alleged discrimination; EEOC may litigate complaints. EEOC also encourages and assists employers in establishing voluntary complaince programs; the guidelines issued by the EEOC are the standards used to determine whether there is compliance with Title VII.

Coverage

Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin, by all private employers of 15 or more persons,

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4/ 42 U.S.C. §2000e et. seq.

5/ See section on Equal Employment Opportunity in the Federal government infra at 13.

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all public and private educational institutions, State and local governments, public and private employment agencies, labor unions with 15 or more members, and joint labor-management committees for apprenticeship and training. Religious institutions, however, may be exempt from the provisions of Title VII where the employment of a particular religion is necessary to carry out the purposes of the institution.

Examples of discrimination forbidden by Title VII include: the maintanance of sex-segregated classified advertising ("help wanted-male" and "help wanted-female"); the establishment of different retirement ages for men and women (62 for women and 65 for men, for example).

What Is Required

State and local governments, private employers, and labor unions must provide to all persons an equal opportunity to participate in training and apprenticeship programs, to be hired and promoted into all types of jobs under the same terms and conditions of employment, and to receive all available benefits of those jobs.

The EEOC has issued Guidelines on Discrimination Because of Sex in order to aid employers in complying with the requirements of Title VII which apply to sex discrimination. These Guidelines are included as appendix number 1 to this handbook.

Complaint

A complaint may be filed with the EEOC by any person (or her/his representative) who believes herself/himself, or any specific group of

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persons, to be subjected to discrimination prohibited by Title VII.

The written complaint should be filed with:

Equal Employment Opportunity Commission
1800 G Street, N.W.
Washington, D.C. 20506

or with any of the seven regional offices:

ATLANTA REGIONAL OFFICE
Citizens Trust Building
Suite 1150
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303
(404) 526-6991

CHICAGO REGIONAL OFFICE
600 South Michigan Avenue, Rm. 611
Chicago, Illinois 60605
(312) 353-1223

DALLAS REGIONAL OFFICE
1100 Commerce Street, Rm. 5A4
Dallas, Texas 75202
(214) 749-1841

KANSAS CITY REGIONAL OFFICE
601 East 12th Street, Rm. 113
Kansas City, Missouri 64106
(816) 374-2781

NEW YORK REGIONAL OFFICE
Federal Office Building
Room 4000
26 Federal Plaza
New York, New York 10007
(212) 264-3640

PHILADELPHIA REGIONAL OFFICE
Jefferson Building
1015 Chestnut Street
Philadelphia, Pennsylvania 19107
(215) 597-7784

SAN FRANCISCO REGIONAL OFFICE
300 Montgomery Street
Suite 740
San Francisco, California 94104
(415) 556-1775

The complaint must be filed within 180 days of the alleged discrimination. Discrimination complaints received by EEOC are referred for 60 days to State and local agencies with similar jurisdiction and enforcement powers. The procedures of these agencies, and their requirements for affirmative action, vary in minor ways; but if satisfactory remedies are not achieved by these agencies, the complaints revert to EEOC for resolution.

EEOC will investigate where a complaint has been made or, on some occasions, where there are other indications that employment discrimination

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exists. After EEOC has made a finding of reasonable cause, the Commission will informally attempt to bring the party responsible for the discriminatory practices into compliance with Title VII.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, EEOC may conduct industry-wide compliance reviews. If EEOC finds that there is discrimination by a State or local government which cannot be corrected informally, it may refer the matter to the Attorney General of the United States. In all other cases, EEOC may go directly to Federal court to enforce the law. In addition, an employee or applicant for employment who feels she/he has been subject to discrimination, and who has been notified by EEOC that it has been unable to secure voluntary compliance within the allotted 180 days from the filing of the complaint, may file suit to enforce Title VII.

The court may order the employer to cease its discriminatory practices to reinstate employees, to pay back wages, and to take other appropriate affirmative action to eliminate existing discrimination.

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TITLE VII OF THE CIVIL RIGHTS ACT OF 1964[6] (AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972), AND EXECUTIVE ORDER 11478,[7]

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

Title VII and Executive Order 11478 prohibit discrimination because of race, color, religion, sex, or national origin in employment within the Federal government. The Civil Service Commission investigates and resolves complaints of alleged discrimination against Federal agencies.[8] The Civil Service Commission requires Federal agencies to establish and maintain affirmative action programs to prevent discrimination and to provide for prompt resolution of complaints where a person feels that she/he has been subjected to discrimination.

Coverage

Title VII and this Order prohibit all Federal agencies, and the agencies of the District of Columbia government with competitive service, from discriminating against employees or applicants for employment on the basis of race, color, religion, sex, or national origin.

Examples of discrimination forbidden by Title VII and Executive Order 11478 include: refusal of a Federal agency to consider male applicants for clerical/secretarial positions; or an agency's insistence that maternity leave begin at an agency's specified date, rather than at the time determined by the woman employee and her physician.

6/ 42 U.S.C. §2000e - 16.

7/ 3 C.F.R. 207 (1974).

8/ See separate section on Equal Employment Opportunity in Private Employment and State and local government.

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What is Required[9/]

A Federal agency must provide to all persons an equal opportunity to be hired and promoted into all types of jobs and to receive all available benefits of those jobs. In order to assure equal employment opportunity, each agency is required to develop and implement an affirmative action plan, which must be approved by the Civil Service Commission. Regional offices of Federal agencies must develop and implement separate plans, which must be approved by the appropriate regional office of the Civil Service Commission. These plans must inform employees and recognized labor organizations of the affirmative action program and must provide procedures for the resolution of complaints of discrimination from employees or applicants for employment.

Each agency must post the names and addresses, hours of availability, and deadlines the Director of Equal Employment Opportunity, the Federal Women's Program Coordinator, and the Equal Employment Opportunity Officers and counselors.

Complaints

Complaint procedures may vary within individual agencies, but all must contain the following elements:

a. Precomplaint Procedure--Any person who believes herself/himself to be subjected to discrimination prohibited by Title VII of this Order, and who wishes to file a complaint, must first consult an Equal Employment Opportunity (EEO) counselor within 30 calendar days of the alleged discrimination. The EEO counselor will investigate the complaint and

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9/ 5 C.F.R. §713 (1973).

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try to resolve it informally. If the complaint is not resolved to the complainant's satisfaction within 21 days, the complainant may file a formal complaint.

The EEO counselor may not restrain a complainant from filing a formal complaint; nor may the EEO counselor reveal the identity of the complainant until the agency has accepted a complaint, unless the complainant authorizes her/him to do so.

b. The Form of the Complaint--The formal complaint must be in writing, and must be signed by the complainant; it should include the name and address of the complainant, the basis for the complaint, and whether the alleged discrimination is based on race, color, national origin, sex, and/or religion.

c. Where to File and With Whom--Complaints may be filed with any of the following:

Director of the Agency
Director of Equal Employment Opportunity for the Agency
Head of the Field Installation
Equal Employment Opportunity Officer for the Agency
Federal Women's Program Coordinator for the Agency

Once the complaint has been received, the Director of EEO must acknowledge it in writing and provide for a prompt investigation, including the circumstances under which the alleged discrimination occurred, the treatment of employees of the complainant's racial, ethnic, religious, or sex group, as compared to the treatment of other employees in the part of the agency in which the discrimination allegedly occurred, the policies and practices related to the work situation which may be discriminatory, as well as all other aspects of the complaint. The investigator either must be employed

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by a different section of the agency than the complainant, or by the Civil Service Commission; the investigator must create a file on her/his investigation. The file is given to the complainant, who must be given an opportunity to discuss it with the appropriate official. An informal resolution will be attempted again, and if the complainant agrees to it, it will be reduced to writing and placed in the file. If the agency fails to carry out the agreement for reasons which are not the fault of the complainant, the complainant may request, in writing, a reinstatement of the complaint at the point at which the agency ceased compliance with the terms of its agreement.

At this time, or in the event that no informal agreement was reached earlier, a proposed disposition will be made and the complainant will be notified of this in writing. The complainant will be allowed 15 calendar days after receiving this notice to notify the agency in writing of her/his decision to either have a hearing, or to have a decision rendered by the agency head without a hearing. A decision by the agency head without a hearing is a final agency decision and may be appealed to the Board of Appeals and Review. (See below under (f) Disposition and Appeal.) If the complainant has not requested either a hearing or a decision by the agency head, the EEO Officer may adopt the proposed disposition, or may forward the case to the agency head for decision. The complainant must be notified of the decision in writing.

(d) Representation--At any point the complainant may designate a representative for herself/himself or may retain an attorney.

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The employee must have a reasonable amount of official time with pay to prepare and appear at any hearing or conciliation effort, and so must her/his representative if that person is also an employee of the agency.

(e) The Hearing--The hearing examiner must be an employee of another agency. Attendance at the hearing is limited to persons determined by the hearing examiner to have direct connection with the complaint. The complainant or her/his representative and the agency representative may corss-examine witnesses under oath and a record of the hearing will be made. The hearing examiner will send to the agency head, or to her/his designee, the complaint file and record of the hearing, the examiner's findings and analysis of the situation which give rise to the complaint, and the recommended decision and remedial action. The examiner must then notify the complainant in writing that this has been done, and must notify the Director of EEO of her/his findings and recommendations.

(f) Disposition and Appeal--Thirty (30) calendar days after the examiner submits her/his recommended disposition it becomes binding on the agency if the agency head or her/his designee does not produce a separate decision. The complainant must be notified in writing of the decision, which is the final agency decision; the complainant must be given a copy of the findings, analysis, decision, and hearing record. If the examiner's recommendations are not followed, the letter to the complainant must state the reasons for this decision.

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The agency must complete the entire procedure, from the filing of the initial complaint to a final agency decision, within 180 days.

The final agency decision may be appealed to the Civil Service Commission within 15 calendar days after the complainant receives a copy of the decision. The written appeal must be sent to:

Board of Appeals and Review
U.S. Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

The Board will review the complaint file and all relevant written representations made to it. There is no right to a hearing before the Board; rather, the Board will issue a written decision, explaining the reasons for that decision. Copies will be sent to the agency and to the complainant. The Board's decision is the final Civil Service Commission decision. (Under exceptional circumstances the Commissioners of the Civil Service Commission may reopen and reconsider any previous decision when requested in writing to do so.)

A civil suit may be filed by the complainant within 30 calendar days after a final decision is made by the agency or by the Civil Service Commission; or, a civil suit may be filed after 180 calendar days from either the date of filing a complaint with an agency, or of filing an appeal with the Commission on which no decision has been made.

(g) Third Party Allegations--A complaint of discrimination may also be made by an organization or other person on personnel matters which are unrelated to an individual complaint of discrimination. The allegations must be sufficiently specific for the agency to investigate them.

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The agency must create a file on the complaint investigation and must make this file available to the complainant. The agency will make a decision and must notify the complainant in writing of the decision and of any corrective action taken. Within 30 calendar days after receiving a copy of the decision, the complainant may appeal to the Civil Service Commission in writing, explaining the basis for the appeal. The Commission will then make a decision and may order corrective action.

At each step of the complaint procedure, every agency decision (including the rejection or cancellation of a complaint), must be reported to the complainant in writing. This notification must include information on the appeal procedure and the deadline for appealing. Some of the deadlines may be extended under exceptional circumstances.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Civil Service Commission may conduct compliance reviews of individual agencies. If a review or a complaint investigation results in a finding of discrimination within an agency, the Commission may order that corrective action be taken. Such action may include: up to two years of back pay at the grade level at which the complainant should have been hired or promoted; retroactive promotions; priority consideration for the next hiring or promotion for which the complainant is qualified; and job offers of the type and grade denied.

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EXECUTIVE ORDER 11246, AS AMENDED BY EXECUTIVE ORDER 11375[10/]

FEDERAL CONTRACT COMPLIANCE PROGRAM

Executive Order 11246, as amended by Executive Order 11375, prohibits discrimination in employment on the basis of race, color, religion, sex, and national origin, by all Federal government contractors and subcontractors, and by contractors and subcontractors in Federally assisted construction. The Office of Federal Contract Compliance (OFCC) of the Department of Labor is responsible for coordinating and overseeing the contract compliance process. The Office of Federal Contract Compliance has issued guidelines, known as Revised Order No. 4,[11/] which require contractors to establish and maintain affirmative action programs to eliminate and prevent discrimination. OFCC has delegated responsibility for implementing program goals to 19 Federal agencies. OFCC is obligated to provide these compliance agencies with guidance and leadership and to evaluate their effectiveness.

Coverage

Executive Orders 11246 and 11375 prohibit Federal contractors and subcontractors which hold contracts of more than $10,000, and banks which are depositories of Federal funds or which handle Federal Savings Bonds, from discriminating against their employees or applicants for employment on the basis of race, color, religion, sex, or national origin.

Although labor unions are not directly subject to the requirements

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10/ 3 C.F.R. 169 (1974).

11/ 41 C.F.R. §60-2 (1973).

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of these Orders, their collective bargaining agreements, membership and other practices may determine whether the Federal contractors with whom they deal are practicing nondiscrimination in employment; therefore unions are important parties to any determination of compliance.

Examples of discrimination forbidden by these Orders include: a contractor's refusal to hire women for certain jobs because of overtime requirements or weightlifting requirements; or, a contractor's acceptance of a union's demand for sex-segregated seniority systems.

OFCC has also issued guidelines on discrimination because of sex in order to aid contractors in complying with Executive Order 11246, as amended by Executive Order 11375. These guidelines can be obtained from the OFCC at the address noted in the complaint section.

What Is Required

Contractors are prohibited from discriminating on the basis of race, color, religion, sex, and national origin in all aspects of their employment activities. In addition, they are required to take affirmative action wherever necessary to remedy the effects of past discrimination or to counteract discriminatory barriers to equal employment opportunity.

Other specific obligations include the following:

Prior to the award of any covered contract the contractor must certify that no facilities provided for employees are subject to segregated use, whether by employer policy or by employee practice.

Contractors with 50 or more employees and contracts of $50,000 are required to scrutinize tests and other screening procedures, and to make

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all changes necessary to assure that they are nondiscriminatory, as part of a written affirmative action compliance program.

Contractors must post notices announcing their nondiscrimination responsibilities in places conspicuous to employees and applicants, and to representatives of each labor union with which they deal.

In all advertisements for employment, contractors must state that there will be no discrimination in selection for any position.

Contractors must include the standard nondiscrimination provisions in all covered subcontracts. Where required by regulation, contractors must file, and require each subcontractor to file, annual employment information forms.

In addition, in Federally assisted construction, contractors are required to assure that all persons, regardless of race, color, religion, sex, or national origin, share fairly in employment opportunities. This may include an obligation to assure that there is minority and female representation in all trades on the job and in all phases of the work, including supervisory positions.

Federal agency compliance programs require that a determination of nondiscrimination for each contractor must be made prior to the award of any covered contract.

Complaint

A complaint may be filed with the OFCC by any person (or by her/his representative) who believes herself/himself, or a specific group of persons, to be subjected to discrimination prohibited by Executive Order

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11246, as amended by Executive Order 11375. The written complaint should be filed with:

Director
Office of Federal Contract Compliance
Department of Labor
Washington, D.C. 20210

or

The Administrator of the individual Federal compliance agency.

The complaint must be filed within 180 days of the alleged discrimination unless, if good cause is shown, the deadline for filing is extended by the OFCC Director, or by the Administrator of the contracting agency.

The compliance agency or the OFCC may investigate the complaint, or may forward the complaint to EEOC for investigation.

Once a complaint has been filed with the Agency, it is the responsibility of the Agency to resolve it.

Enforcement and Sanctions

Contractors are subject to thorough onsite compliance reviews by the responsible Federal compliance agency. Where such a review results in a finding of discrimination, specific written commitment for its correction—giving the dates and details of action to be taken—is required of the contractor. On formally advertised supply contracts of $1 million or more, such compliance reviews must be performed, prior to award, for the low bidder and for his/her first tier subcontractor (holding a subcontract of $1 million or more).

Where complaints or compliance reviews have disclosed discrimination which the contracting agency is unable to remedy by informal means, the

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following sanctions are available: OFCC, or the compliance agency with approval from OFCC, may begin proceedings to cancel the contract or debar the contractor from future Federal contracts; these proceedings may include a formal hearing, if the contractor requests it. While the hearing is pending, OFCC may suspend performance on the contract. OFCC, or the contracting agency, with approval from OFCC, may publish the names of contractors or unions which are not in compliance. OFCC or the compliance agency may also recommend that the U.S. Attorney General or EEOC file suit to enforce the contractor's obligations, or that appropriate proceedings be begun under Title VII of the Civil Rights Act of 1964.

The Executive Order also provides a penalty for noncompliance by unions--publication of the names of unions not complying--and recognizes that remedies in Federal suits against violations of the Executive Order may need to encompass unions.

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EQUAL PAY ACT OF 1963 (AS AMENDED BY EDUCATION AMENDMENTS OF 1972)[12/]

The Equal Pay Act amended the Fair Labor Standards Act (which established a Federal minimum wage, overtime pay and child labor laws) to include a prohibition against pay differentials based on sex. All businesses which must pay employees minimum wage are prohibited from discriminating on the basis of sex in determining wages for workers. The Education Amendments of 1972 extended the Equal Pay Act's sex discrimination provision to include executive, administrative, and professional workers, (including academic personnel).[13/]

Coverage

The Act forbids any employer who must pay employees at least minimum wage from determining wages for workers on the basis of sex.

Examples of discrimination forbidden by this Act include: establishment of different pay scales for female and male clericals; or for female maids and male janitors, who perform substantially similar work; or establishment of higher commissions for male salespersons who sell men's clothing than for female salespersons who sell women's clothing.

What Is Required[14/]

Covered employers must pay women and men the same wages if they work at the same business location, under similar working conditions, doing

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12/ 29 U.S.C. §206(d), amending the Fair Labor Standards Act of 1938, 29 U.S.C. §201 et. seq.

13/ 29 U.S.C. §213(a).

14/ 29 C.F.R. §§800.0-800.16 (1973).

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similar work which requires equal or substantially similar skill, effort, and responsibility. Differences in pay must be based on merit, seniority or a method which measures earnings by quantity or quality of production, but may not be based on the sex of the worker.

Complaint

A complaint may be filed with the Wage and Hour Division of the Department of Labor by any person who believes herself/himself, or any specific group of persons to be subjected to discrimination prohibited by this Act, or by any individual who believes that violations of the Act exist in any place of business. The complaint may be written or verbal (by telephone) and may be made anonymously. Complaints should be made to any of the offices of the Wage and Hour Division, which are located in most major cities, or with:

Administrator, Wage and Hour Division
Department of Labor
Constitution Avenue and Fourteenth Street, N.W.
Washington, D. C. 20210

The Administrator will make an investigation where a complaint has been made or where there are other indications that an employer is operating in violation of the Act, and will informally attempt to bring the employer into compliance with the Act's prohibition against unequal pay on the basis of sex.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Administrator of the Wage and Hour Division may conduct periodic compliance reviews to insure that employers are not discriminating on the basis of sex in

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determining wages. Where an employer is discriminating, and the Administrator has found that this cannot be corrected informally, the Department of Labor may file suit to enforce the Act.

In addition, an employee who feels she/he has been discriminated against in the payment of wages may file suit to enforce the Act. The employee must file suit within two years of the alleged discrimination; if the discrimination was willful, the employee has three years in which to file.

The Court may order the employer to stop discriminating on the basis of sex in determining wages and to pay up to two years of back wages; if the discrimination is found to be willful, the Court may order the employer to pay up to three years of back wages, plus an equal amount as a penalty.

In addition, an employer who is convicted of willfully violating this Act may be subject to a fine of up to $10,000; if convicted twice, the employer may be imprisoned for up to six months.

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INTERGOVERNMENTAL PERSONNEL ACT OF 1970[15/]

This Act is designed to encourage the development of State and local government personnel merit systems. Agencies or programs of State and local governments which receive grant-in aid from a Federal agency are required to develop and implement merit systems.

The Act also provides funds to enable the Civil Service Commission to make grants to State and local governments to strengthen personnel administration in State and local government.

State or local government units receiving funds covered by the Act are prohibited from discriminating on the basis of race, national origin, political or religious affiliation or opinions, age, sex, physical disability, and/or any other characteristic which is unrelated to merit, unless it is a bona fide occupational qualification.[16/]

Coverage

Programs of State and local governments which receive grant-in aid from a Federal agency, and any unit of State or local government receiving a grant from the Civil Service Commission may not prohibit discrimination in employment on the basis of race, national origin, political or religious affiliations or opinions, age, sex, physical disability, and/or any other characteristic which is unrelated to merit, unless it is a bona fide occupational qualification.

15/ 42 U.S.C. §§4701-4772.

16/ See Glossary for definition.

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Examples of discrimination forbidden include: refusal by a local government to employ women in funded government programs (fire fighting, for example); or, refusal by an employer to admit women to employer-sponsored Federally funded training programs for administrative positions.

What Is Required[17/]

Federally funded programs with personnel merit system requirements must provide to all employees and applicants for employment equal employment opportunity and equal opportunity to receive all benefits of employment. Such Federally funded programs must also develop and implement affirmative action plans.

State or local governments receiving grants from the Civil Service Commission under the Act must provide to all employees and applicants for employment equal employment opportunity and equal opportunity to receive all benefits of employment. These governments may also, at the option of the Civil Service Commission, be required to develop and implement affirmative action plans.

Complaints

Each program establishes its own complaint procedures; an explanation of the complaint procedures may be obtained from each program. At minimum, each program must provide for an investigation of the complaint, and an appeal of any decision to an impartial body, whose finding of discrimination is binding on the program. A complaint may be filed with any funded

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17/ 45 C.F.R. §70 (1973).

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program by any person who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by the regulations promulgated under this Act.

In addition, if the program's complaint procedure does not include provisions for investigation and appeal, a complaint may be filed with:

Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

The complaint to the Commission however, may only address the inadequacy of the program's complaint procedure and may not address the individual discrimination which formed the basis of the complaint.

Enforcement and Sanctions

Where there is an individual complaint of discrimination against a funded program, enforcement and the imposition of sanctions, depend on each program's complaint procedure.

Where the complaint is to the Civil Service Commission concerning deficiencies in the program's complaint procedure, the Commission will investigate and negotiate informally with the program to urge the program to bring its standards into compliance with the Act's requirements. If these negotiations are unsuccessful, the Civil Service Commission will recommend to the funding agency that appropriate action be taken to force compliance; this might include withholding funds from the program, or refusing to grant funds in the future.

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COMPREHENSIVE EMPLOYMENT AND TRAINING ACT OF 1973 18/

This Act establishes a decentralized system of Federal, State and local government programs to provide job training and employment opportunities for economically disadvantaged, unemployed and underemployed persons. These programs may be sponsored by a State, a unit of local government, or an employment program serving a rural area with a high level of unemployment. These programs are sometimes called "Manpower" or "Employment Training," "Rural Concentrated Employment Program," or "Comprehensive Manpower Training," and may include classroom training, on-the-job training and public service employment.

The Secretary of Labor is responsible for determining who receives funds, for approving programs, and for assuring that the programs are in compliance with the non-discrimination provision of the Act. Under this provision, the Secretary may not provide financial assistance for any program unless the grant, contract or agreement to receive funds specifically provides that no person with responsibilities in the operation of the program will discriminate against any program participant or applicant for participation on the basis of race, color, creed, national origin, sex, political affiliation or beliefs.

Coverage

The Act forbids any job training program which receives funds through this Act, from discriminating on the basis of race, color, creed,

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18/ 29 U.S.C. §§801-992. Replaces the Emergency Employment Act of 1969 and the Manpower Development and Training Act of 1962.

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national origin, sex, political affiliation or beliefs. This prohibition also covers anyone who contracts or subcontracts with any funded program, as well as anyone who works with such a program by agreement.

Examples of discrimination forbidden by this Act would include: refusal to admit women to certain training programs considered "inappropriate" for women; establishment of different requirements or pay levels for women than for men participating in the same program.

What Is Required[19/]

A program receiving funds under this Act must afford all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits, including services and financial aid.

Complaint

The sponsor may not permit discrimination in any program for which it is responsible; the sponsor must establish procedures, separate from the Department of Labor's procedures, to prevent discrimination.[20/] Complaints may be made to the sponsor, in accordance with its procedures, as well as to the Department of Labor.

A complaint may be filed with the Department of Labor by any person (or her/his representative) who believes herself/himself or any specific group of persons to be subjected to discrimination prohibited by this Act. The written complaint should be filed with:

19/ 29 C.F.R. §31 (1973). Title VI, 42 U.S.C. §2000d-1 procedures, authorized for use in sex discrimination under this Act.

20/ 39 Fed. Reg. 10399 (1974).

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Secretary of Labor
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20210

A complaint made to the Department of Labor must be filed within 90 days of the alleged discrimination, but the Secretary may extend this deadline. Once the complaint has been filed, it is the responsibility of the Secretary to resolve it; the complainant is no longer involved. The Secretary will make an investigation if a complaint has been made or if there are other indications that the funded program is discriminating; the investigation is not necessarily limited to the specific complaint. The Secretary will attempt to bring the program into compliance with the Act's nondiscrimination provision.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Secretary may choose to conduct periodic compliance reviews to insure that programs are operated without discrimination. Where a program is discriminating or threatening to discriminate, and the Secretary has found that this cannot be corrected informally, she/he may terminate or refuse to grant funds to such a program. In order to do this the Secretary must allow for a hearing and may only terminate funds where it is found that there will not be voluntary compliance with the nondiscrimination provision of the Act. In addition, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

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EQUAL EMPLOYMENT OPPORTUNITY IN THE STATE COOPERATIVE EXTENSION SERVICES[21/]

The Cooperative Extension Services of the Department of Agriculture are associated with Land-Grant Universities and are responsible for providing the general public with useful and practical information (through demonstrations and publications) regarding agriculture and home economics. Regulations[22/] issued by the Secretary of Agriculture prohibit discrimination in employment and provide for a procedure, involving both the University President and the Secretary, to assure that the Cooperative Extension Service provides equal opportunity in employment to each individual without regard to race, color, national origin, sex, or religion.

Coverage

All Land-Grant Universities operating a Cooperative Extension Service, all positions in all units of the Cooperative Extension Service, and employees provided by county or local governments in support of Cooperative Extension Service programs (such as county agents and home demonstrators) are included.

Examples of prohibited discrimination include: the refusal of a State Extension Service to consider women applicants for jobs involving technical assistance to farmers; or restricting women to positions as demonstrators only in the home economics division.

21/ 7 U.S.C. §§341-349.

22/ 7 C.F.R. §18 (1973).

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What Is Required

In order to insure that employment is provided without discrimination, each University is required to develop and implement an affirmative action program. This program must include a statement of policy, a plan for eliminating discrimination and assuring equal opportunity in employment, and an enforcement procedure. Procedures for identifying and eliminating discriminatory employment practices and for handling complaints must be delineated; and records must be kept of all complaints and their disposition.

Complaints

Procedures are required for both the informal resolution of complaints, and for the filing of a formal written complaint. A complainant may file a formal complaint if she/he is not satisfied with the result of the informal procedure, or if she/he chooses not to follow the informal procedure. Formal complaint procedures may vary among programs but must contain the following:

(a) The Form of the Complaint--The formal complaint must be written and must include: the name and address of the complainant; the specific basis of the complaint; and a statement that the alleged discrimination was based on race, color, national origin, sex, and/or religion.

(b) Deadline for Filing--A complaint must be submitted within 90 days of the conduct giving rise to the complaint; however, this deadline may be extended by the University President or the Secretary of Agriculture.

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Each University's procedures must provide the names and locations of the persons with whom the complaints may be filed. Complaints may also be filed with:

Secretary of Agriculture
Department of Agriculture
14th Street and Independence Avenue, S.W.
Washington, D.C. 20250

Complaints filed with the Secretary are promptly forwarded to the University President or designee for processing.

(c) Representation--A complainant may designate in writing a person or an organization to represent him/her.

The employee is allowed to use a reasonable amount of official time, with pay, to appear at any conciliation effort or hearing on the complaint. The complainant's representative may also use official time if she/he is an employee of the Cooperative Extension Service of the U.S. Department of Agriculture.

(d) The Hearing--The complainant or the University President may request a hearing before an impartial board or hearing officer. At the hearing, the University President, the complainant, and the person whose alleged conduct is the cause of the complaint may call and cross-examine witnesses under oath; a record of the hearing will be made.

(e) Disposition of Appeal--The impartial board or hearing officer sends its conclusions and recommendations to the University President, who can then either return the case to the board or hearing officer for further hearings, make a decision on the complaint, or otherwise dispose of it. The complainant may appeal the decision to the Secretary of Agriculture within 30 days of (1) disposition by the University President,

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(2) refusal by the President to accept the complaint, or (3) failure of the President to act in accordance with the program. The Secretary may hold a hearing and issue a written decision as to whether the University President's decision or disposition of the complaint was proper.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Secretary may choose to conduct periodic compliance reviews to insure that programs are operated without discrimination in employment. When the Secretary finds that a Land-Grant University or Cooperative Extension Service is not in compliance with this Act, she/he may terminate or refuse to grant funds to the programs, or take any other action authorized by law.

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EQUALITY FOR MARRIED WOMEN FEDERAL EMPLOYEES[23/]

This Act provides for equality of treatment for female Federal employees with respect to "preference eligible" employment status for veterans, cost-of-living allowances in foreign areas, and regulations providing benefits dependent on marital status.

The Civil Service Commission gives preference in the hiring and retention of Federal jobs to veterans, spouses of veterans who are totally and permanently disabled as a result of service-connected duty, the widowed spouses of veterans, and, in some cases, their mothers. Prior to 1971 these preferences were provided only to male veterans and their spouses and mothers. The Act extended the preferences to female veterans and their spouses and mothers.

The Federal government provides a separate maintenance allowance where a Federal employee is compelled to maintain her/his family elsewhere than at the post of assignment; also provided are education and travel allowances when a Federal employee is assigned to a foreign area and must incur the cost of providing adequate education at the kindergarten through secondary level for his/her dependents. Prior to 1971 these allowances were provided only to male Federal employees and their dependents. The Act extended the allowance to female Federal employees and their dependents.

The President now may prescribe rules which prohibit discrimination on the basis of marital status in an executive agency or in the competitive

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23/ Pub. L. 92-187. 1971 amendments to 5 U.S.C. §§2108, 5924, 7152.

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service. Prior to 1971, Federal agencies were permitted to treat females and males differently. The Act requires that equal benefits must be provided to both married male employees and their spouses or families and married female employees and their spouses or families.

Coverage

The Act provides that female Federal employees and their spouses and/or families, will receive the same benefits as male Federal employees and their spouses and/or families. The Act also provides that male and female veterans, and their spouses or widowed spouses, will be considered "preference eligibles" and will receive preference in the hiring and retention of Federal jobs. The mother of a veteran who is permanently and totally disabled or deceased as a result of service-connected duty is also considered a "preference eligible" if her husband is totally and permanently disabled, or if she is widowed, divorced, or separated.

Examples of discrimination forbidden by this Act include: the denial of "preference eligible" status to the widower of a female veteran, although it is granted to the widow of a male veteran; or, the denial of an educational allowance for the dependent children of a female Federal employee assigned to a foreign post.

What Is Required

The Federal government must provide equal benefits to female and male Federal employees and their spouses and/or families. Male and female veterans, their spouses, and mothers (under certain conditions), must receive preference in the hiring and retention of Federal jobs, without regard to sex.

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Complaint

A complaint may be filed with the Civil Service Commission by any person (or by her/his representative) who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by this Act. The written complaint should be filed with the area office of the Civil Service Commission. The complaint procedures vary, depending on the type of discrimination alleged (for example, denial of "preference eligible" status, adverse action by an agency against a "preference eligible" employee, or denial of separate maintenance allowance to a married Federal employee on the basis of sex); a complainant therefore should request specific complaint and appeals procedure information when filing the initial complaint.

Enforcement and Sanctions

The enforcement and sanctions depend upon the complaint procedure.

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EQUAL EMPLOYMENT OPPORTUNITY AND TREATMENT OF MILITARY PERSONNEL IN THE AIR FORCE[24/]

These regulations define Air Force policy regarding sex discrimination. Commanders are required to assure that personnel on the bases under their command are not discriminated against on the basis of race, color, national origin, or sex. In addition, they are required to seek to eliminate discrimination against military personnel off-base.

Coverage

These regulations forbid the establishment or maintenance by Air Force bases of policies which discriminate on the basis of race, color, national origin, or sex.

Examples of discriminatory policies forbidden by these regulations include: refusal of an off-base billiards parlor to serve female military personnel; or denial of equal on-base housing facilities for female and male military personnel.

What Is Required

Base directives must reflect equal opportunity and treatment for all military personnel. In addition, base commanders must seek to eliminate off-base discrimination against military personnel by working with off-base community groups and by establishing and monitoring programs to assure nondiscrimination in the area of off-base housing.

24/ 38 Fed. Reg. 20325 (1973). Amendments to 32 C.F.R. §886 (1973).

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Complaint

A complaint may be filed by any person (or her/his representative) who believes himself/herself, or a specific group of persons, to be subjected to discrimination prohibited by these regulations. Complaints relating to base policy should be filed with the base Equal Opportunity Office; those relating to off-base business establishments, other than housing should be filed with the base Armed Forces Disciplinary Control Board; complaints relating to off-base housing should be filed with the base Housing Referral Office. Complaint procedures vary, depending on the type of discrimination alleged. A complainant therefore should request specific complaint and appeals procedure information when filing the initial complaint.

Enforcement and Sanctions

The enforcement and sanctions depend on the complaint procedure, but may include ordering changes in base policy to bring such policy into compliance with the prohibition against sex discrimination, and designating off-base businesses which are found to be operating in a discriminatory manner off-limits to military personnel.

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EQUALITY FOR WOMEN IN THE MERCHANT MARINES[25/]

The Federal government operates the U.S. Merchant Marine Academy at Kings Point, New York; California, Maine, Massachusetts, New York, Texas, and Michigan operate Maritime Academies with Federal aid. Recent amendments to the regulations of the Commerce Department lift restrictions which had prohibited these academies from admitting women.

Coverage

The U.S. Merchant Marine Academy and State Maritime Academies may now admit women and are prohibited from refusing admission on the basis of sex.

Examples of discrimination unauthorized by these amendments include: refusal of the U.S. Merchant Marine Academy to admit qualified female candidates; establishment of more stringent entrance requirements for women than for men by a State Maritime Academy.

What Is Required

The U.S. Merchant Marine Academy and the State Maritime Academies which receive Federal aid are no longer authorized to discriminate in admissions on the basis of sex.

Complaint

A complaint may be filed with the Maritime Administration of the Department of Commerce by any person (or by his/her representative) who

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25/ 39 Fed. Reg. 2759 (1974) and 38 Fed. Reg. 10087 (1973). Amendments to 49 C.F.R. §310 (1973).

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believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by these regulations. The written complaint should be filed with:

Maritime Administration
Department of Commerce
14th Street between Constitution Avenue
and E Street, N.W.
Washington, D.C. 20230

The Maritime Administration will investigate where a complaint has been made, or where there are other indications that a covered institution is discriminating on the basis of sex; the Maritime Administration will then informallythen informally attempt to stop the unauthorized discrimination. Once a complaint has been filed, the complainant is no longer involved, and it is the responsibility of the Maritime Administration to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Maritime Administration may conduct periodic compliance reviews to ensure that institutions are operated without discrimination. Where an institution is found to be discriminating on the basis of sex, and the Maritime Administration has found that this cannot be corrected informally, the Secretary of Commerce may withhold funds, or refuse to make future grants to the institution. Before such action may be taken, the Maritime Administration must allow for a hearing; the Maritime Administration may only withhold aid where it is found that there will not be voluntary compliance with the nondiscrimination provision. In addition, the Secretary may

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refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

FEDERAL PROGRAMS

Several Federal laws and regulations prohibit sex discrimination by recipients of Federal assistance. Although employment is sometimes specifically covered, the prohibition usually applies only to participation in, and receipt of the benefits of, the program. This section discusses the scope of these laws and regulations, including an explanation of their coverage and requirements, and their prescribed complaint procedures. For any discriminatory action, policy or practice there may be several possible avenues of redress. Filing a complaint under one law or regulation will not usually prevent filing a complaint under another. Therefore, if an individual, or a group of persons feels that they have been subjected to sex discrimination, they should examine all possible avenues of redress. Even where there is uncertainty about the applicability of a law or procedure to a specific instance of sex discrimination, the victim of such discrimination should consider utilizing the complaint procedure.

Agencies which grant Federal assistance tend to utilize Title VI procedures, or procedures which closely follow those prescribed by Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin, but does not include a specific sex discrimination prohibition. Where agencies have prohibited sex discrimination in Federally assisted programs by regulations, they generally utilize their established Title VI procedures. These procedures provide that a complaint may be filed by any person who believes herself/

himself, or any group of persons, to be subject to sex discrimination prohibited by agency regulations. Complaints should be filed with the appropriate agency with the power and authority to apply sanctions where discrimination is found.

Under Title VI type procedures, the complaint acts to alert the agency that discrimination may exist, and that an investigation is necessary; this permits the agency to impose sanctions where discrimination is found. Although these procedures do not necessarily afford the complainant the right to a hearing, or the right to have her/his individual complaint resolved, the complaint is a potentially powerful tool, for it assists agencies or other responsible parties in deciding who to investigate, where to conduct compliance reviews, when to order accelerated repayment of loans, when to withhold funds, and which contracts, loans, or other assistance to renew.

The Department of Justice is the litigation arm of the executive branch of the Federal government. Under certain circumstances, the Attorney General of the United States is authorized to file suits charging a pattern and practice of discrimination. In addition, the Department of Justice has overall responsibility for Title VI coordination within the Federal government; and the Attorney General is authorized under Title VI to file suits charging discrimination on the basis of race, color, or national origin. Where the Attorney General is authorized to file suits charging sex discrimination, it has been noted in the specific sections of this handbook.

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (HIGHER EDUCATION ACT)[26/]

Most educational institutions across the United States receive Federal financial assistance; these include preschool programs, elementary, and secondary school systems; four-year colleges and universities, vocational and technical schools, two-year community and junior colleges, and graduate and professional schools. Title IX of the 1972 Amendments to the Higher Education Act prohibit educational institutions which receive Federal funds from discriminating on the basis of sex.

Coverage

These Amendments prohibit discrimination on the basis of sex by educational institutions receiving Federal funds. This prohibition covers educational programs, employment, athletics, admissions and financial aid, and all other programs and services of the institution. Certain types of institutions, however, are exempt from the provisions of the amendments only with regard to admissions. These are: military schools; schools which have traditionally admitted only individuals of one sex; and schools operated by religious organizations whose religious tenets are inconsistent with co-education. Private schools which are in transition from single-sex to co-educational institutions are allowed seven years to complete the process, during which they may continue to make admissions decisions on the basis of sex.

Examples of discrimination forbidden by these Amendments include: refusal of a co-educational institution to admit women to any academic

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26/ 20 U.S.C. §§1681-1686. These are amendments to 20 U.S.C. §1001 et. seq.

program (engineering, animal husbandry, for example); refusal of a Board of Education to hire or promote qualified women as principals in the school system; or refusal of a college to allow women equal access to athletic programs and facilities (including playing fields, equipment, and instruction).

What Is Required

An educational institution receiving Federal funds must afford all persons an equal opportunity to participate in and receive the benefits of all educational programs and activities.

Complaint

A complaint may be filed with the Office for Civil Rights of the Department of Health, Education, and Welfare by any person (or his/her representative) who believes herself/himself, or either sex as a class, to be subjected to discrimination prohibited by these Amendments. The written complaint should be filed with:

Director, Office for Civil Rights
Department of Health, Education and Welfare
330 Independence Avenue, S.W.
Washington, D. C. 20201

HEW may investigate where a complaint has been made or where there are other indications that the educational institution is discriminating on the basis of sex. HEW will informally attempt to bring the institution into compliance with the Amendments' nondiscrimination provision. Once a complaint has been filed, the complainant is no longer involved and it is the responsibility of HEW to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, HEW may conduct periodic compliance reviews. Where an educational institution is found to be discriminating on the basis of sex, and HEW finds that this cannot be corrected informally, it may terminate or refuse to grant funds to the institution. Before such action may be taken, HEW must allow an opportunity for a hearing, and must find that there will not be voluntary compliance with the nondiscrimination requirements. In addition, HEW may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972[27]

REVENUE SHARING

This Act provides funds to States, counties, townships, municipalities, (and other local governments), Indian tribes and Alaskan native villages, for public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, financial administration and other expenditures.

To qualify for funds, a local government must file with the Office of Revenue Sharing in the Treasury Department a statement of assurance that it will not discriminate against any person on the basis of race, color, national origin, or sex.

Coverage

The Act prohibits any local government, or any program receiving Revenue Sharing funds, from discriminating on the basis of race, color, national origin, or sex.

Examples of discrimination forbidden by this Act include: the use of revenue sharing funds by a local government to maintain a fire department which hires men only as firefighters; use of revenue sharing funds to build recreational facilities which provide programs for men and boys only.

What Is Required[28]

27/ 31 U.S.C. §§1221-1263.

28/ 31 C.F.R. §51 (1973). 29 C.F.R. §31(1973), Title VI, 42 U.S.C. §2000d procedures, authorized for use in sex discrimination under this Act.

A local government program funded under this Act must give all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.

Complaint

A complaint may be filed by any person (or her/his representative) who believes herself/himself or any specific group of persons, to be subjected to discrimination prohibited by this Act. The written complaint should be filed with:

Director, Office of Revenue Sharing
U.S. Department of the Treasury
15th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20220

There are no deadlines for filing a complaint.

Once a complaint has been received, the Secretary of the Treasury will notify the chief executive of the government which is operating the program in which discrimination is alleged, that such a complaint has been filed. If the Secretary has reason to believe (on the basis of the report) that there is discrimination, then he/she will make an investigation of the facts and circumstances of the complaint.

If the Secretary determines that there is discrimination, she/he will notify the Governor of the State in which the program is located and will attempt informally to bring the program into voluntary compliance. The Governor then is given 60 days to accomplish this.

Once a complainant has filed a complaint with the Secretary, she/he is no longer involved; it is the responsibility of the Secretary to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Secretary may chose to conduct periodic compliance reviews to insure that programs are operated without discrimination. Where a local government program discriminates and the Secretary has found that this cannot be corrected informally, she/he may withhold or terminate funds to such a program. In order to do this the Secretary must allow for a hearing and must file a report of the circumstances and grounds for the action with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Secretary may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

In addition, where a State or local government is found to be engaged in a pattern of discrimination, the Attorney General is authorized to file a Civil action.

CRIME CONTROL ACT OF 1973[29]

The Criminal Control Act of 1973 provides Federal funds through the Law Enforcement Assistance Administration (LEASS) for programs and activities to improve law enforcement and the criminal justice system on State and local levels. Under the Act, any program or activity receiving such funds may not discriminate against any person on the basis of race, color, national origin or sex;[30] all funded programs must provide written assurances of this to LEAA.

In addition, regulations issued by the Law Enforcement Assistance Administration[31] prohibit discrimination in employment by any unit of a state or local government which receives funds from LEAA.

Coverage

The Crime Control Act forbids any program or activity which receives part or all of its funds through LEAA from discriminating on the basis of race, color, national origin or sex. This provision also covers anyone who contracts or subcontracts with any funded program.

Examples of discrimination forbidden by this Act and by LEAA regulations include: the use of differing pay scales for male and female police officers receiving training with LEAA funds; or a state's use of proportionately less grant money in the construction and operation of

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29/ Crime Control Act of 1973, 87 Stat. 197, Title I (codified in scattered sections of 5, 40, 42 U.S.C.).

30/ 87 Stat. 197, Title I, §518 (c) (1).

31/ 23 C.F.R. §42.201 et. seq. (1973).

correctional institutions housing female offenders than in those housing male offenders.

What Is Required

A program or activity receiving funds under LEAA must provide to all persons an equal opportunity to participate in all aspects of the program or activity.

Complaint

A complaint may be filed with the LEAA by any person (or her/his representative) who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by this Act and/or by the LEAA regulations prohibiting employment discrimination. The written complaint should be filed with:

Administrator
Law Enforcement Assistance Administration
Department of Justice
633 Indiana Avenue, N.W.
Washington, D.C. 20530

The complaint must be filed within 90 days of the alleged discrimination, but this deadline may be extended. LEAA will investigate the facts and circumstances of the complaint.

If LEAA determines that discrimination exists, the Administrator will notify the Governor of the State in which the program or activity is located and attempt informally to bring the program into voluntary compliance.

Once the complaint has been filed, the complainant is no longer involved, and it is the responsibility of the LEAA to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, LEAA may conduct periodic compliance reviews to insure that programs or activities are operated without discrimination. Where a program or activity is discriminating, and LEAA has found that this cannot be corrected informally, LEAA may withhold or terminate funds to such a program or activity. Contractors or subcontractors which are discriminating may have their contracts terminated and may be barred or suspended from receiving further LEAA contracts. Before such action may be taken, LEAA must allow for a hearing. LEAA may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

Where a State or local government is engaged in a pattern of practice of discrimination, the Attorney General of the United States is authorized to file a civil action.

SMALL BUSINESS ADMINISTRATION[32/]

The Small Business Administration (SBA) was created to assist and protect the interests of small businesses and to provide loans to small businesses and to victims of catastrophes for the rebuilding of businesses and other property. The SBA may not discriminate on the basis of race, color, religion, sex, or national origin in the granting or the administration of loans. In addition, no business receiving funds through SBA may discriminate on the basis of race, color, religion, sex, or national origin.

Coverage

SBA regulations forbid both SBA and small businesses which receive funds from SBA, from discriminating against any person on the basis of race, color, religion, sex, or national origin.

Examples of discrimination forbidden by SBA regulations include: refusal of SBA to grant a loan to a female owned and operated business which was otherwise qualified; or, the refusal or a small business which has an SBA loan to hire a woman in any job classification (delivery truck driver, for example); or the maintenance of different retirement plans for women and men by a business which has an SBA loan.

What Is Required[33/]

Both the SBA and any small businesses receiving funds from SBA

32/ 15 U.S.C. §631 et. seq.

33/ 13 C.F.R. §105.735-5-4 (1973), paragraph 7 of SOP 90-30 (Internal regulations of the SBA).

must provide equal employment opportunity and equal opportunity to receive all available benefits and services.

Complaint

A complaint may be filed with SBA by any person (or her/his representative) who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by SBA regulations. The written complaint should be filed with:

Chief of the Compliance Division
Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

A complaint made to the SBA must be filed within 90 days of the alleged discrimination, but SBA may extend this deadline. SBA will investigate where a complaint has been made, or there are other indications that a small business receiving funds from SBA is discriminating; SBA will then attempt to bring the business into compliance with the nondiscrimination provision of SBA's regulation. Once a complaint has been filed, the complainant is no longer involved, and it is the responsibility of SBA to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the SBA may conduct periodic compliance reviews to insure that businesses are operated without discrimination. Where a business is discriminating, and the SBA has found that this cannot be corrected informally, it may accelerate

repayment of an SBA loan from such a business. Before such action may be taken, the SBA must allow for a hearing; SBA may only accelerate repayment where it is found that there will not be voluntary compliance with the nondiscrimination requirement. In addition, the SBA may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

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FEDERAL-AID HIGHWAY ACT OF 1973[34/]

The Federal-Aid Highway Act authorizes money to be spent through state highway departments to construct the Interstate Highway system and to build or improve certain roads and streets. The Act provides that no person may be excluded from participation in the program, be denied benefits of the program, be denied employment in the program, or otherwise be subjected to discrimination on the basis of sex.

Coverage

The Act prohibits any state or local government highway department, anyone contracting or subcontracting with a highway department, or anyone otherwise participating in a project funded by this Act, from practicing discrimination on the basis of sex.

Examples of such discrimination include: the failure of a state highway department to consider women applicants in the selection of contractors; or the refusal of a contractor to hire women on road crews.

What Is Required[35/]

An equal employment opportunity program is required of each state receiving funds under this Act. The Secretary of Transportation requires

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34/ 23 U.S.C. §324.

35/ 49 C.F.R. §21 (1973).

each State to include notification of the specific equal employment opportunity responsibilities of the contractor in the advertised specifications of the contract.

Complaint

There are no formalized complaint procedures; however, any person who believes herself/himself to be subject to discrimination prohibited by this Act should send complaints to:

Director
Office of Civil Rights
Department of Transportation
400 7th Street, S.W.
Suite 10217
Washington, D.C. 20590

The Office of Civil Rights, Department of Transportation is responsible for processing and investigating complaints, and will attempt to secure voluntary compliance. Once a complaint has been filed with the Department of Transportation, the complainant is no longer involved; it is the responsibility of the Department to resolve it.

Enforcement and Sanctions

Besides Department of Transportation investigations initiated by a complaint, the Federal Highway Administration may conduct periodic compliance reviews to insure that programs are operated without discrimination. Where a program is discriminating and the Federal Highway Administration has found that this cannot be corrected informally, the FHA may withhold or terminate funds to the program. In order to do this FHA must allow for a hearing and may only cut off funds where

it is found that there will not be voluntary compliance with the nondiscrimination provision of the Act. In addition, FHA may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972[36/]

This Act provides Federal funds for the prevention, reduction, and elimination of water pollution in the United States. Funds and technical assistance may be provided to State and local governments, institutions, organizations, or individuals who are conducting research, developing programs, building facilities such as sewage treatment plants, or training persons to work in water pollution control programs.

The Environmental Protection Agency (EPA) is responsible for approving State guidelines for programs funded under this Act and for assuring that the programs are in compliance with the nondiscrimination provision of the Act. Any program receiving funds under this Act may not discriminate against any person of the basis of sex.

Coverage

The Act forbids any local government or any program receiving funds through this Act from discriminating on the basis of sex.

Examples of discrimination forbidden by this Act include: the refusal by a research institution funded through this Act to provide fellowships for female as well as male researchers; or the refusal by a contractor building a sewage treatment plant to hire women in any job classification (construction equipment operator, for example).

What Is Required[37/]

A local government or program funded under this Act must provide

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36/ 33 U.S.C. §1151 et. seq.

37/ 33 U.S.C. §1251 Note.

to all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.

Complaint

A complaint may be filed with the Environmental Protection Agency by any person (or her/his representative) who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by this Act. The written complaint should be filed with:

Division of Civil Rights and Urban Affairs
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

There are no deadlines for filing a complaint.

The Environmental Protection Agency will make an investigation where a complaint has been made or if there are other indications that the funded program is discriminating and informally attempt to bring the program into compliance with the nondiscrimination provision of the Act. Once the complaint has been filed, the complainant is no longer involved, and it is EPA's responsibility to resolve it. The complainant has no right under this Act to participate in the hearing, if there is one, or to have his/her individual complaint resolved.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the EPA may conduct periodic compliance reviews to insure that programs are operated without discrimination. Where a program is discriminating and EPA has found that this cannot be corrected informally, it may withhold or terminate funds to such a program. In order to do this EPA must

allow for a hearing and may only cut off funds where it is found that there will not be voluntary compliance with the nondiscrimination provision of the Act. In addition, EPA may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

TITLE VII OF THE PUBLIC HEALTH SERVICE ACT[38]

Title VII of the Public Health Service Act, as amended by the Comprehensive Health Manpower Training Act of 1971 and the Nurse Training Act of 1971,[39] provides funds to aid in the education and training of all health workers, including, for example doctors, nurses, and technicians. The funds are used for training programs, for construction of schools or training centers, and for financial assistance to students in health professions. These Acts prohibit discrimination on the basis of sex by institutions receiving or benefiting from a grant, loan guarantee or interest subsidy, or institutions applying for a grant under the Acts.

The Secretary of the Department of Health, Education, and Welfare (HEW) is responsible for determining who receives funds, for approving programs, and for ensuring that such programs do not discriminate on the basis of sex. The Secretary may not provide financial assistance for any program unless the grant, contract or agreement to receive funds specifically provides that no person with responsibilities in the operation of the program will discriminate against any program participant or applicant on the basis of sex.

Coverage

These Acts forbid any medical school, nursing school, or other health

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38/ 42 U.S.C. §216(b).

39/ 42 U.S.C. §298b-2 (Nurse Training Act of 1971), 42 U.S.C. §295h-9 (Comprehensive Health Manpower Training Act of 1971).

professional school or training program which receives funds through these Acts from discriminating on the basis of sex in the admission of students.

Examples of discrimination forbidden by these Acts include: maintenance of different admission standards for male and female applicants by a medical school; or, refusal of a training program to accept men in nurse training classes, for example.

What Is Required

A medical, nursing or other health professional school or training program receiving funds under these Acts must afford to all persons an equal opportunity to participate in all aspects of their programs and to receive all available benefits and services.

Complaint

A complaint may be filed with the office for Civil Rights of HEW by any person (or her/his representative) who believes herself/himself, or any specific group of persons to be subjected to discrimination prohibited by these Acts. The written complaint should be filed with:

Higher Education
Office for Civil Rights
Department of Health, Education, and Welfare
330 Independence Avenue, S.W.
Washington, D.C. 20201

HEW will make an investigation where a complaint has been made, or where there are other indications that the covered institution is discriminating; HEW will informally attempt to bring the institution into compliance with the nondiscrimination requirements of the Acts. The investigation will

not be limited to the specific complaint. Once a complaint has been filed, the complainant is no longer involved and it is HEW's responsibility to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, HEW may conduct periodic compliance reviews to insure that the institutions are operated without discrimination. Where an institution is discriminating, and HEW has found that this cannot be corrected informally, it may terminate funds or refuse to grant funds to such an institution. Before such action may be taken, HEW must allow for a hearing; HEW may only terminate funds where it is found that there will not be voluntary compliance with the nondiscrimination requirement. In addition, HEW may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

DISASTER RELIEF ACT OF 1970 [40]

The Disaster Relief Act enables the Federal government to assist State and local governments in alleviating problems which result from major disasters, such as floods or tornadoes. Programs under the Act provide for temporary housing assistance, removal of debris, housing and business loans, legal services, and other essential assistance to victims of disasters. These programs are to be administered without discrimination on the basis of race, color, religion, nationality, sex, age, or economic status prior to a major disaster.

Coverage

Distribution of supplies, the processing of applications, and other relief and assistance activities are to be accomplished without discrimination. The Act provides that relief organizations, as a condition of participation in the distribution of assistance, must comply with the nondiscrimination requirements of the Federal Disaster Assistance Administration.

Examples of discrimination prohibited by the Act include: rejection of a family's housing loan application because of the head of the household is a woman; refusal to provide a loan to a female owned business.

What Is Required

All programs administered or authorized under this Act must give

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40/ 42 U.S.C. §4419.

all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits, services, and other assistance.

Complaint

No formal procedures for filing of complaints have been established by the Office of Federal Disaster Assistance Administration; however, under the Act, a person (or her/his representative) who believes herself/himself to be subjected to discrimination prohibited by this Act, may file a complaint in person, by telephone, or by mail, with the Civil Rights Compliance Officer in the Disaster Field Office located at the scene of the disaster. A written complaint may also be filed with:

Federal Coordinating Officer
Federal Disaster Assistance Administration
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

or

Any of the 10 Regional Offices of Federal Disaster Assistance Administration

Enforcement and Sanctions

If compliance cannot be achieved by informal means, then the Director of the Federal Disaster Assistance Administration may refer the matter to the Attorney General of the United States for legal action. Relief organizations found to be in noncompliance can be barred from participating in the distribution of assistance or supplies under this Act.

NON-DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR[41]

The Department of the Interior oversees a wide variety of programs; the Department both administers programs and provides various types of assistance, such as technical assistance, funding and land for other programs. Programs included under the jurisdiction of the Department cover such varied areas as conservation, Indian affairs, recreation, parks, public works, public lands, and natural resources. Such programs may not discriminate on the basis of race, color, sex, or national origin; and they must provide written assurances of nondiscrimination to the Department of the Interior.

Coverage

These regulations prohibit discrimination on the basis of race, color, sex, or national origin in receiving assistance through the Department of the Interior; the prohibition also applies to anyone who contracts or subcontracts with any funded program, as well as anyone who works with such a program by agreement.

Examples of discrimination forbidden by these regulations include: the refusal of a state park, using lands granted by the Department of the Interior, to permit females to participate in all camp programs, or to refuse to hire women in any job classification (lifeguard, for example).

What Is Required

A program receiving assistance through the Department of the Interior

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41/ 43 C.F.R. §17 (1973). Regulations issued by the Department of the Interior to effectuate Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d-1, including sex discrimination.

must give all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.

Complaint

A complaint may be filed with the Secretary of the Interior by any person (or her/his representative) who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by these regulations. The written complaint should be filed with:

Secretary of the Interior
C Street between 18th and 19th Streets, N.W.
Washington, D.C. 20240

A complaint must be filed within 180 days of the alleged discrimination, but the Secretary may extend the deadline. The Secretary will make an investigation where a complaint has been made, or where there are other indications that the assisted program is discriminating; the Secretary will informally attempt to bring the program in to compliance with the Department's regulations prohibiting discrimination. Once the complaint has been filed, the complainant is no longer involved, and it is the responsibility of the Secretary to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Secretary may conduct periodic compliance reviews to insure that programs are operated without discrimination. Where a program is discriminating, and the Secretary has found that this cannot be corrected informally, she/he may withhold or terminate assistance to such a program. In addition, the Secretary may refer to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965 42/

This Act provides Federal assistance, in the form of information services, planning, assistance, grants, and loans to areas with severe unemployment and low family income. The purpose of such assistance is to provide employment opportunities and services for the residents, and to prevent outward migration. Assistance is granted for development of public works and for business loans for industrial and commercial facilities; Federal guarantees also may be provided for private working capital loans. Areas eligible for this assistance are designated "Redevelopment Areas" and "Economic Development Districts." Regional Planning Commissions may be established to serve multi-state areas; representatives of each State advise the Secretary of Commerce on matters of area economic development.

The Economic Development Administration (EDA) in the Department of Commerce administers the Act; the EDA is prohibited from providing assistance for any program unless the grant, contract, loan or agreement to receive assistance specifically provides that the program will not discriminate on the basis of sex in providing employment, benefits, or services.

Coverage

The Act forbids any program which receives assistance through this Act from discriminating on the basis of sex. This prohibition also

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42/ 42 U.S.C. §3121 et. seq.

applies to anyone who contracts or subcontracts with a funded program, and to anyone who works with a program by agreement.

Examples of discrimination forbidden by this Act include: refusal of a funded training program to admit unemployed women unless they are heads of households; refusal of a contractor in a funded program to accept bids for subcontracts from female-owned businesses.

What Is Required[43/]

A program receiving assistance under this Act must provide to all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services without regard to sex.

Complaint

A complaint may be filed with the EDA by any person (or by her/his representative) who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by this Act. The written complaint should be filed with:

Economic Development Administration
Department of Commerce
14th between Constitution Avenue and E Street, N.W.
Washington, D.C. 20230

Complaints must be filed within 90 days of the alleged discrimination, but EDA may extend this deadline. EDA will make an investigation where a complaint has been made or where there are other indications that the assisted program is discriminating on the basis of sex; EDA will informally

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43/ 13 C.F.R. §§311.40-311.51.

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attempt to bring the program into compliance with the Act's prohibition against sex discrimination. The investigation is not limited to the specific complaint. Once a complaint has been filed with EDA, the complainant is no longer involved and it is the responsibility of EDA to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, EDA may conduct periodic compliance reviews to ensure that programs are operating without discrimination. Where a program is found to be discriminating, and EDA has found that this cannot be corrected informally, the Secretary of Commerce may terminate, suspend or refuse to grant assistance to such a program. In order to do this the Secretary must allow for a hearing, and may only terminate funds where it is found that there will not be voluntary compliance with the nondiscrimination provision of the Act. In addition, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

HOUSING ACT OF 1954[44/]

This Act provides Federal funds for planning and technical assistance to aid in a broad range of activities by areawide intergovernmental planning organizations. Funds may come through State agencies or directly from the Department of Housing and Urban Development (HUD), which oversees and administers these 701 Planning Grants. These programs are prohibited from discriminating in employment on the basis of race, color, national origin, religion, and sex, and they must provide written assurances of compliance.

Coverage

This Act forbids any program funded through this Act, or anyone contracting with a funded program, from discriminating against an employee or applicant for employment on the basis of race, color, national origin, religion, or sex.

Examples of discrimination forbidden by this Act include: the refusal of a planning agency to hire women in any position for which they are qualified, including positions as architects, or urban planning specialists, for example; or, refusal of a planning agency to contract with female-owned firms.

What Is Required[45/]

A program receiving funds under this Act must afford all persons equal employment opportunity, including equal access to all available benefits and services.

44/ 40 U.S.C. §459 et. seq.

45/ 24 C.F.R. §600 (1973).

Complaint

A complaint may be filed with the Department of Housing and Urban Development by any person (or by his/her representative) who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by regulations promulgated under this Act. The complaint should be filed with:

Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

The complaint must be filed within 180 days of the alleged discrimination, but HUD may extend this deadline. HUD will investigate where a complaint has been made, or where there are other indications that a program is discriminating in violation of these regulations; HUD will then attempt to bring the program into compliance with the nondiscrimination provisions of these regulations. Once a complaint has been filed, the complainant is no longer involved, and it is the responsibility of HUD to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, HUD may conduct periodic compliance reviews to insure that programs are operated without discrimination. Where a program is found to be discriminating, and HUD has found that this cannot be corrected informally, it may withhold or terminate funds to such a program. Before such action may be taken, HUD must allow for a hearing; HUD may only withhold or terminate funds where it is found that there will not be voluntary compliance with the nondiscrimination requirement. In

addition, HUD may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965[46/]

This Act provides Federal funds for planning and technical assistance to aid the economic physical, and social development of the Appalachian region. Programs developed under this Act are administered by the Appalachian Regional Commission. The Commission may directly fund a program, or it may coordinate the funding programs of other Federal agencies.

Programs included under the jurisdiction of the Commission cover such varied areas as highway development, conservation, housing development, vocational education, health, and child care projects. Such programs may not discriminate against any program participant on the basis of sex.

Coverage

The Act forbids any program, funded or coordinated under this Act, from discriminating on the basis of sex.

Examples of discrimination forbidden by this Act include: the refusal of an employer in a program to hire women with pre-school age children, while not considering this factor in the hiring of men; or refusal of the administrator of a vocational training program to admit women to certain training courses (auto mechanics, for example).

What Is Required[47/]

A program receiving funds under this Act must give all persons an

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46/ 40 U.S.C. §101 et. seq.

47/ 40 U.S.C. §223.

equal opportunity to participate in all aspects of the program and to receive all available benefits and services.

Complaint

A complaint may be filed with the Appalachian Regional Commission or with the funding source by any person (or her/his representative) who believes herself/himself, or any specific group of persons, to be subjected to discrimination prohibited by this Act. Before filing a complaint, the individual should contact the program to determine the funding source. Where the Appalachian Regional Commission is the funding source, the program is required to develop complaint procedures. Where the Appalachian Regional Commission merely coordinates the funding of other agencies of the Federal government, the complainant must use the complaint procedures of the funding agency.

If a complainant does not know with whom to file, she/he should contact:

Executive Director
Appalachian Regional Commission
166 Connecticut Avenue, N.W.
Washington, D.C. 20235

Enforcement and Sanctions

The enforcement and sanctions depend upon the complaint procedure established by the funding agency.

FEDERAL REGULATORY SYSTEM

Many of the nation's largest industries, including the broadcast media, the household moving industry, and stocks and securities firms, are regulated by agencies of the Federal government; some require governmental permission for their existence. This Federal relationship provides a potentially powerful weapon with which to eliminate sex discrimination. Unfortunately, few of the regulatory agencies have adopted regulations prohibiting sex discrimination. This section delineates the extent to which Federal regulatory power has been used to prohibit sex discrimination.

FEDERAL COMMUNICATIONS COMMISSION[48]

The Federal Communications Commission regulates the broadcast media and telephone and telegraph companies. No radio or television station, or telephone or telegraph company may operate without a permit or license from the FCC.

Employment

FCC regulations provide that no person employed by the media or by any company regulated by the FCC may be discriminated against in employment on the basis of race, color, religion, sex, or national origin.

Programming

The FCC requires that programming be responsive to community needs, which includes the needs and concerns of women of all races and ethnicities.

Coverage

All companies regulated or licensed by the FCC are required to comply with the regulations established by the FCC.

What Is Required

Employment[49]

Each station or company regulated by FCC must establish and carry out an affirmative action program designed to assure equal opportunity in every aspect of employment policy and practice. This affirmative action plan must be submitted to the FCC for approval. In addition,

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48/ 47 U.S.C. §151.

49/ 47 C.F.R. §23.55 (1973).

the stations and companies must submit annual reports to the FCC indicating whether any complaints of discriminatory employment practices have been filed.

Programming

In making application for license renewals (every three years, normally), stations must prove that their programming is serving community needs. They must conduct a community assessment, which includes consulting with community leaders to ascertain community needs; they must also list the significant suggestions received, evaluate such suggestions, and analyze the relationship of program service to community needs.[50/]

Complaints

Employment

A complaint may be filed with the FCC by any person (or by her/his representative) who believes herself/himself, or any specific group of persons, to be subjected to employment discrimination prohibited by FCC regulations. The written complaint should be filed with:

Federal Communication Commission
Industry Equal Employment Office Unit
Room 646
1919 M Street, N.W.
Washington, D. C. 20554

Complaints within the jurisdiction of the Equal Employment Opportunity Commission will be forwarded to that Agency for investigation and disposition. Where the EEOC does not have jurisdiction, but the discrimination is covered by State or local law, the complaint will be forwarded

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50/ Federal Communication Commission, Public Notice, August 22, 1968.

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to the appropriate State agency. Complaints which do not come under either EEOC or State jurisdiction will be handled by the FCC. The FCC will also investigate complaints against a station or company which it regulates if a pattern of discrimination in employment practices is alleged.

Programming

A written complaint of discrimination in programming may be filed with the FCC at the address listed above; however, the FCC does not normally investigate complaints alleging racial, religious or sexist criticism, ridicule or humor, because it is prohibited by statute from censoring program material. Such complaints, and complaints alleging the lack of programming responsive to the needs and interests of women can, however, be relevant to the license renewal process, if these complaints reveal a station's failure to be responsive to community needs. Examples of lack of responsiveness to the needs of women in programming include: inadequate news coverage of issues and events of concern to women, such as child care legislation, ratification of the Equal Rights Amendment, and women's participation in athletic events (the Olympics, for example); or, the failure to provide news programs and public service announcements during the daytime hours, when the majority of viewers are women.

Enforcement and Sanctions

Employment

The FCC may refuse to grant licenses or permits to applicants, or may revoke or refuse to renew existing licenses or permits, where the

station or company is found to discriminate on the basis of race, color, religion, sex, or national origin in employment practices.

Programming

Failure of a broadcast licensee to provide programs addressing community needs, including programs meeting the needs of women and minority group members, can result in revocation or suspension of a broadcast license.

FEDERAL HOME LOAN BANK BOARD[51/]

The Federal Home Loan Bank Board is an independent agency within the Executive Branch of the government which provides flexible credit reserves for member savings institutions engaged in home mortgage lending.

A 1973 amendment[52/] to the Board's regulations includes statements of policy, one of which provides that discrimination on the basis of sex or marital status is an unacceptable practice for covered lending institutions.[53/] Pre-existing regulations prohibit discrimination on the basis of race, color, religion or national origin.

Coverage

The regulations cover all lending institutions that are members of the Federal Home Loan Bank. These can include Federal savings and loan associations, insurance companies, building and loan and homestead associations, and savings and cooperative banks.

Examples of prohibited discrimination include: the refusal of a savings and loan association to consider the total income of both spouses in determining the mortgage eligibility of a married couple; or the refusal of an insurance company to provide mortgages to single women on the same basis as to single men.

What Is Required

A lending institution that is a member of the Federal Home Loan

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51/ 12 U.S.C. §1437 et. seq.

52/ 38 Fed. Reg. 31653.

53/ When codified will appear as 12 C.F.R. §531.8(c)1.

Bank Board may not discriminate on the basis of race, color, religion, national origin, or sex.

Complaint

A complaint may be filed with the Federal Home Loan Bank Board by any person (or her/his representative) who believes herself/himself to be subjected to discrimination prohibited by this Act. The written complaint should be filed with:

Office of Housing and Urban Affairs
Federal Home Loan Bank Board
101 Indiana Avenue, N.W.
Washington, D.C. 20552

An investigation will be made of the alleged violation and the investigator will seek compliance with the alleged violator by informal means.

Enforcement and Sanctions

Where a member of the Federal Home Loan Bank is found to be discriminating, and it is found that this cannot be corrected informally, the Board may issue a cease and desist order and thus force the institution to comply.

FEDERAL INFORMATIONAL AGENCIES

A small number of Federal agencies and programs exist which focus entirely or partially on the rights, responsibilities, and role of women in American society. None of these agencies and programs have enforcement powers; rather, their functions are advisory and informational. This section describes the various functions and responsibilities of these agencies and programs.

WOMEN'S BUREAU

The Women's Bureau, located in the Employment Standards Administration of the Department of Labor, was established by Congress[54/] in June 1920. The Bureau has statutory responsibility, under its enabling legislation, for the formulation of standards and policies which will promote the welfare of wage-earning women, improve their working conditions, and advance their opportunities for profitable employment.

The Director of the Women's Bureau, appointed by the President and approved by the Senate, is designated by the Secretary of Labor as Special Counselor to the Secretary for women's programs.

Throughout the past 54 years, the Women's Bureau has significantly broadened the scope of its concerns so that today the Bureau addresses itself to the multiple roles of women in American society, all of which are related to their participation in the work force.

The Women's Bureau initiates conferences on such topics as the problems of working women, the education and training of women, and legislation relating to women workers. In cooperation with Commissions on the Status of Women, educational organizations, women's groups, State labor departments, and trade unions, the Women's Bureau plans and conducts conferences, seminars, and symposia on various issues related to the economic role and status of women. The Bureau also calls into consultation individuals and organizations working in such specific

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54/ 29 U.S.C. 11-13.

areas as child care for children of working mothers, wages and working conditions of household workers, and aid to disadvantaged girls and women.

The publications of the Women's Bureau provide background information, current statistics, and analyses of data on various issues relating to the status of women in the labor force. Publications address career opportunities for women, trends in women's employment, vocational education and counseling, minimum wage, equal pay and opportunity, political and legal status of women, legislation affecting women, women in poverty, child care for working mothers, and women's educational attainment, labor union participation, and economic status.

Inquiries may be addressed to:

Women's Bureau
U.S. Department of Labor
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20210

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN

The Citizens' Advisory Council on the Status of Women was established by Executive Order 11126 on November 1, 1963, as amended by Executive Order 11221 (May 6, 1965). The Council consists of 20 members appointed by the President, one of whom is designated by the President to serve as Chairperson of the Council.

The Council functions as a catalyst to action for private institutions, organizations, and individuals working for improvement of the status of women. In addition, the Council periodically reviews and evaluates the degree of progress of organizations toward achieving full participation of women in American life.

The Council produces many publications which analyze issues of relevance to women. These include numerous substantive analyses of the history and potential effects of the Equal Rights Amendment on Federal and state laws and official practices relating to alimony, child support and custody laws, property rights of married women, "protective" labor laws which apply only to women, military service, jury service, and Social Security, for example.

The Council also produces annual reports on the current status of American women, including information on, for example, employment and employment-related issues, education, the Equal Rights Amendment, the military service, credit, manpower training, Supreme Court decisions of significance to the changing status of women, and child care.

The Citizens' Advisory Council on the Status of Women is also empowered to advise the Interdepartmental Committee on the Status of Women and to recommend appropriate action to the Committee to improve the status of women.

Inquiries may be addressed to:

Citizens' Advisory Council on the Status of Women
Department of Labor
Room 1336
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20210

INTERDEPARTMENTAL COMMITTEE ON THE STATUS OF WOMEN

The Interdepartmental Committee on the Status of Women was established by Executive Order 11126 (as amended by Executive Order 11221); it is composed of Cabinet officers (the Secretaries of Labor, State, Defense, Agriculture, Commerce, Health, Education, and Welfare, the Attorney General, the Chairperson of the Equal Employment Opportunity Commission, the Director of the Office of Economic Opportunity, and an Assistant Secretary of Labor), with the Director of the Women's Bureau serving as Executive Vice-Chairperson.

The Interdepartmental Committee is empowered to review and evaluate the progress of Federal agencies in advancing the status of women, to serve as a clearinghouse for information, to encourage research, and to stimulate cooperation and sharing of information among agencies and organizations working to improve the status of women in the areas of education, home and community activities, employment, social insurance, taxes, civil and political rights, and labor legislation, among others.

Inquiries may be addressed to:

Interdepartmental Committee on the Status of Women
c/o Director, Women's Bureau
Department of Labor
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20210

or

Citizens' Advisory Council on the Status of Women
Department of Labor
Room 1336
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20210

WOMEN'S ACTION PROGRAM, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The Women's Action Program was created by the Secretary of Health, Education, and Welfare (HEW) on February 17, 1971, in response to a recommendation of the President's Task Force on the Rights and Responsibilities of Women. The Program was established with a dual focus--on eliminating discrimination against women within the Department of Health, Education, and Welfare, and on addressing problems of sex discrimination in society as a whole.

The Women's Action Program seeks to insure that all programs of the Department of Health, Education, and Welfare are relevant to the needs of all women in society who are presently or potentially recipients of HEW services, and to establish systems for monitoring the effects of these programs as they relate to improving the status of women. Within this context, the Women's Action Program also seeks to make HEW program managers more aware of the unique needs of minority women, and of socially disadvantaged and physically handicapped women for the ultimate purpose of improving services to these women. The Program seeks to increase the Department of Health, Education, and Welfare research efforts designed to improve the status of women.

In addition, the Women's Action Program seeks to increase opportunities for women to serve on public advisory committees, to receive contracts and grants from the Department of Health, Education, and Welfare, and to perform as staff at all levels within the Department (in support of the

Department's Federal Women's Program).

The activities of the Women's Action Program involve analysis of HEW programs in order to assess their impact on women and to recommend changes in these programs to render them more responsive to the needs of women. The Women's Action Program also works with other staff within the Department of Health, Education, and Welfare to identify and attempt to eliminate the many forms and sources of sex discrimination within the agency itself.

Initially, the Program made a systematic analysis of the needs for change and recommended goals and methods of change to be pursued by the Department. The "Report of the Women's Action Program--January, 1972" reports these analyses and recommendations and sets forth an agenda of positive action to help overcome the cumulative effects of institutionalized discrimination against women.

Inquiries may be addressed to:

Women's Action Program
Department of Health, Education, and Welfare
HEW North
330 Independence Avenue, S.W.
Washington, D.C. 20201

FEDERAL WOMEN'S PROGRAM, U. S. CIVIL SERVICE COMMISSION

In response to Executive Order 11375, which amended Executive Order 11246 to prohibit sex discrimination in Federal employment, the Civil Service Commission established the Federal Women's Program. The purpose of the Program is to enhance employment and advancement opportunities for women in the Federal government. Executive Order 11478 integrated the Federal Women's Program into the Federal government's overall Equal Employment Opportunity Program. The Equal Employment Opportunity Act of 1972 provided a statutory base for equal opportunity in the Federal government.

The Federal Women's Program is administered by the Director of the Program, located in the Civil Service Commission. In addition, Civil Service regulations require that all Federal agencies designate a Federal Women's Program Coordinator to advise the agency's Director of Equal Employment Opportunity on matters affecting the employment and advancement of women, and to assure that necessary specific actions are taken to establish and maintain equal opportunity for women.

The primary program efforts of the Federal Women's Program have been oriented toward affirmative action in the Federal government. The Program seeks to create the legal, regulatory, and administrative framework for achieving equality of opportunity for both women and men. The Federal Women's Program coordinators attempt to bring practice into closer accord with merit principles through the elimination of practices, attitudes, customs, and habits which have previously denied women entry into certain occupations, as well as access to high-level positions through the career service. Finally, the Federal Women's

Program encourages qualified women to compete in examinations for Federal employment and to participate in training programs leading to advancement.

The Federal Women's Program also focuses on issues of concern to female Federal employees, including extension of part-time employment opportunities, and development of child care centers, for example. The Program also encourages the inclusion of women in all types of training programs and takes other actions to insure that women employees are participating fully in the activities of their agencies (promotion panels, detail assignments, planning committees, and professional conferences, for example.)

Inquiries may be addressed to:

Federal Women's Program
U.S. Civil Service Commission
1900 E Street, N.W. Room 7540
Washington, D.C. 20415

UNITED STATES COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights was established by the Civil Rights Act of 1957;[55/] the Act was amended in October 1972,[56/] to extend the Commission's jurisdiction to include sex discrimination, in addition to discrimination on the basis of race, religion, color, or national origin.

The Commission is a bipartisan, independent agency whose six commissioners are appointed by the President and confirmed by the Senate. The Commission is charged with the responsibilities of factfinding and reporting regarding civil/women's rights problems, and with making recommendations for corrective action to the President and the Congress. The function of the Commission is purely investigatory and factfinding; it does not adjudicate, and it cannot take any affirmative action which will affect an individual's legal rights. Its factfinding may subsequently be used as a basis for judicial, legislative or executive action.

In order to carry out its factfinding responsibility the Commission has the power to hold public hearings, to issue subpenas and to take testimony under oath. The Commission also utilizes other appropriate factfinding research tools.

The Commission serves as a national clearinghouse for information regarding denials of equal protection of the laws on the basis of race color, religion, sex, or national origin. As such, it publishes a

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55/ 42 U.S.C. §1975.

56/ Pub. L. 92-496.

wide variety of materials pertaining to civil/women's rights.

The Commission has established State Advisory Committees (one in each State and the District of Columbia) to assist in the factfinding, investigative, and clearinghouse functions of the Commission. These Committees are composed of citizens who serve without compensation and who are knowledgeable about local and State civil/women's rights problems. The Committees issue reports to the Commission which are published when appropriate; they also make recommendations to the Commission which may be used in its reports to the President and Congress.

The Commission has two units which are of special note in the context of this publication: the Complaints Unit and the Women's Rights Program Unit.

The Complaints Unit does not investigate complaints; however, complaints are referred to the appropriate departments or agencies for enforcement. In cases where no such enforcement mechanism exists, the Complaints Unit responds to the complainant with advice and recommendations.

The Women's Rights Program Unit coordinates the implementation of the Commission's recent jurisdiction over sex discrimination. The unit identifies and evaluates women's rights issues, proposes Commission hearings, studies, and reports, and is involved in developing and implementing programs which investigate issues of concern to women of all races and ethnicities. The Unit organizes and maintains liaison with national women's rights organizations, Federal and State agencies, and private research institutions concerned with women's rights issues.

Inquiries may be addressed to:

U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

GLOSSARY

Affirmative Action Plan--An affirmative action plan is usually a formal plan which develops a specific program to remedy the effects of past discrimination and prevent its reoccurence. A plan usually involves a workforce utilization analysis, including an analysis of job classifications in which certain classes of persons are underrepresented, the establishment of numerical goals and timetables to increase utilization of those classes, explanation of the methods to be used to eliminate discrimination, and establishment of responsibility for implementing the program.

The employer is required to make a good faith effort to meet the goals established by the plan within the time allotted by the plan.

Bona Fide Occupational Qualification--A bona fide occupational qualification (BFOQ) is a job qualification, not necessarily based on merit, education, or experience, which is reasonably necessary to the normal operation of the particular business or enterprise, and reasonably related to the job. The use of sex as a bona fide occupational qualification has been declared illegal, in most instances, by the Equal Employment Opportunity Commission (EEOC).[57/] The EEOC has interpreted the applicability of sex as a BFOQ narrowly; its "Guidelines on Discrimination Based on Sex offer only two occupations in which sex may be used as a BFOQ--actor and actress.

Class Action--A class action is a civil suit brought by one or more

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57/ See appendix, infra at 107; "Guidelines on Discrimination Because of Sex."

persons on behalf of all persons who are similarly situated or who are subject to similar discrimination.

Complaint--A complaint is the formal notification of alleged discrimination to the proper authority by a complainant, who may be a person, group, or organization. The complaint should contain sufficient information to permit an investigation, including as much of the following as the complainant can provide:

name, address, phone number of the complainant;
name, address, phone number of the party against whom the complaint is made; a complaint of employment discrimination should include the name of the complainant's supervisor and the name, address, phone number of the employer;
name of the agency, department, and/or person (with her/his title) to whom the complaint is being made;
date of filing the complaint;
request that the complaint be considered a formal complaint of discrimination;
explanation of the type of discrimination (i.e., sex, race, national origin, religion);
plain and concise statement of the facts and circumstances of each allegation of discrimination;
date of the discriminatory act or notification of a continuing policy of discrimination;
any other information which is relevant and will aid in understanding the complaint and resolving the alleged discrimination;
request that a hearing be held, if one is desired;
request that relief be granted from the discriminatory action, policy, or practice; and
signature of the complainant.

The complaint is usually considered filed when it has been delivered to the proper official or office. The enforcement agency or department may have specific complaint forms or other special requirements, such as notarization of the complaint, but it should notify the complainant of this upon request, or upon receipt of a complaint. If the complainant requests it, her/his name will usually be kept confidential. It is

sometimes not necessary for the complaint to be in writing or for the complainant to identify himself/herself. For her/his own protection, the complainant should keep a copy of any written complaint and a written, dated record of any oral complaint.

The complainant need not be able to prove the discrimination, but may make a complaint where he/she merely believes that discrimination exists. The enforcement agency or department is responsible for ascertaining whether discrimination occurred and will provide investigators and/or hearing examiners for this purpose.

No person may intimidate, threaten, coerce, or discriminate against any individual because she/he has made a complaint or in any way participated in an investigation or hearing. If such retaliatory action does occur, this, in itself, may be the basis for a complaint of discriminatory harassment.

Compliance Review--Depending on the statute, the agency, and the agency regulations involved, compliance reviews may be conducted with or without a complaint; reviews may be limited to a particular complaint or may encompass a specific organization or an entire industry. Compliance reviews investigate whether a particular party, employer or industry is operating in compliance with the non-discrimination requirements of the applicable statutes and regulations. Reviews may cover the circumstances and facts of specific allegations of discrimination, policies and practices which may result in discrimination, and the adequacy of affirmative action plans and complaint procedures.

Conciliation—Conciliation is the process of seeking to resolve a

discrimination complaint, usually through informal negotiations, without resorting to a formal hearing or legal action.

Discrimination--Discrimination is the effect of an action, policy, or practice which selects a class of persons to receive unequal treatment. Discrimination may involve a single act or may be a continuing policy or practice. Discrimination may be intentional or unintentional; purpose or intent is irrelevant when the effect of a particular action, policy or practice is to deny equal opportunity. Similarly, discrimination may be overt (that is, using sex or race to discriminate openly) or covert (that is, when a mechanism indirectly related to sex or race is used to discriminate).

Equal Employment Opportunity--Equal employment opportunity provides equal access to all available jobs and training, under equal terms and conditions, and with equal benefits and services, in the absence of actions, policies, and practices which differentiate among applicants and employees on the basis of race, color, national origin, sex, age, and religion. This includes equality in recruitment, hiring, layoff, discharge, recall, promotion, training, responsibility, wages, sick leave, vacation, overtime, insurance, retirement and pension benefits, and breaks.

Executive Order--Executive Orders are issued by the President and are binding on the executive branch of the Federal government.

Guidelines--Guidelines are interpretations of regulations.

Jurisdiction--Jurisdiction refers to the limits or territory within which an authority has the power or right to legislate, interpret the law, or govern.

Legal Action--A legal action is a civil or criminal suit filed in a court. A suit may be filed by a prosecutor, an enforcing agency or department, an aggrieved person(s), or an organization, depending on the type of suit.

Civil suits are filed for the declaration, enforcement, and protection of rights, or for the redress or prevention of a wrong. Specific statutes or sections of the Federal or State constitutions give particular parties the right to file civil suits. An injunction is a court order forbidding certain actions by certain persons; a request for an injunction is a civil action filed to prevent the initiation or continuation of a wrong. In certain cases in which a complainant wins a civil suit, the court may order the party complained against to pay the complainant's attorney's fees and court costs.

Criminal actions are filed to seek punishment for infractions of the the criminal law. Only the Department of Justice or a State prosecuting agency may prosecute a criminal action.

Prosecuting agencies are authorized by law to choose which statute to sue under, if more than one statute applies. Prosecuting agencies may also take nonjudicial action, including the publication of the names of parties who are found to be in violation of laws prohibiting discrimination, or the debarring of such companies or organizations from receiving any future Federal contracts or financial assistance.

Pattern and Practice Suit--A pattern and practice suit is a civil suit which alleges the existence of a repeated or customary action or practice, or succession of acts of a similar type, which result in a pattern of discrimination.

Regulations--Regulations are the rules or orders promulgated by funding, coordinating, and regulatory agencies; these regulations interpret applicable statutes and are binding on those persons and organizations which are within the agency's jurisdiction.

Rights--Rights are the powers and/or privileges of the individual or group which must be respected by others.

The right to a hearing is the right of a complainant, or the party complained against, to have an administrative hearing, upon request, before a hearing examiner or hearing board. Although many discrimination complaint procedures do not afford the complainant the right to a hearing, the enforcing agency or department may hold a hearing for the party complained against and may permit the complainant to participate in it.

The right to file suit is the right of a complainant to file a civil action to enforce a right which allegedly has been violated. Although many statutes prohibiting discrimination do not afford the complainant the right to file suit, the enforcing agency or department, or the Department of Justice, may file suit and permit the complainant to participate in it. In addition, the complainant may be granted the right to file suit by the enforcing agency.

Statute--A statute is a law, enacted by a legislature, which declares, commands, or prohibits certain actions. A Federal statute applies to the entire country; a State or local statute applies only to that State or local jurisdiction.

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PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by section 713(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e-12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby revises Title 29, Chapter XIV, § 1604 of the Code of Federal Regulations.

These Guidelines on Discrimination Because of Sex supersede and enlarge upon the Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission on December 2, 1965, and all amendments thereto. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

Section 1604.1 General Principles.

(a) References to "employer" or "employers" in Part 1604 state principles that are applicable not only to employers, but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

Section 1604.2 Sex as a Bona Fide Occupational Qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels -- "Men's jobs" and "Women's jobs" -- tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

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(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented state employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by Title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that state laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by Title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established

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unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of states require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by state law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented state employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of Title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the state law is in conflict with and superseded by Title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some states require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

Section 1604.3 Separate Lines of Progression and Seniority Systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect

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any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression" and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

Section 1604.4 Discrimination Against Married Women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by Title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of Section 703(e)(1) of Title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

Section 1604.5 Job Opportunities Advertising.

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

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Section 1604.6 Employment Agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

Section 1604.7 Pre-employment Inquiries as to Sex.

A pre-employment inquiry may ask "Male _____, Female _____"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

Section 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in Title VII is co-extensive with that of the other prohibitions contained in Title VII and is not limited by Section 703(h) to those employees covered by the Fair Labor Standards Act.

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(b) By virtue of Section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under Title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

Section 1604.9 Fringe Benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

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(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

Section 1604.10 Employment Policies Relating to Pregnancy and Childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencment and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

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